

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LEE MIXON,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

2:16-cv-02014-RFB-GWF

ORDER

I. DISCUSSION

On August 24, 2016, Plaintiff, a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF No. 1, 1-1). On August 30, 2016, this Court issued an order denying Plaintiff’s application to proceed *in forma pauperis* without prejudice to file a new application because Plaintiff’s application had been incomplete. (ECF No. 3).

On October 20, 2016 this Court acknowledged that Plaintiff had submitted a letter explaining his difficulty in obtaining the necessary documents from the NDOC. (ECF No. 7 at 1). In response to the letter, the Court granted Plaintiff an extension of time to file a fully complete application to proceed *in forma pauperis*. (*Id.*). Alternatively, the Court stated that, if Plaintiff continued to have difficulty obtaining a financial certificate and an inmate account statement from prison officials, he could file:

an affidavit detailing the efforts he took to acquire a financial certificate and an inmate account statement from prison officials. If Plaintiff chooses to file an affidavit, his affidavit must describe the actions he took to acquire the documents through Friday, November 25, 2016. Plaintiff shall not file an affidavit before that date. Additionally, Plaintiff must submit an application to proceed *in forma pauperis* to this Court even if he is unable to acquire the necessary attachments from prison officials.

(*Id.* at 2).

1 On October 27, 2016, Plaintiff filed an affidavit detailing efforts he took to acquire a
2 financial certificate in September 2016. (ECF No. 8). The Court finds that Plaintiff failed to
3 comply with this Court's October 20, 2016 order. In that order, the Court directed Plaintiff to
4 describe the actions he took to acquire the documents through Friday, November 25, 2016.
5 Plaintiff did not do so. As such, Plaintiff will be granted one final opportunity to cure the
6 deficiencies of his application to proceed *in forma pauperis*, or in the alternative, pay the full
7 filing fee for this action. Plaintiff may no longer submit an affidavit in lieu of an application.

8 Pursuant to 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, Plaintiff must complete an
9 application to proceed *in forma pauperis* and attach both an inmate account statement for the
10 past six months and a properly executed financial certificate. The Court will retain Plaintiff's
11 civil rights complaint (ECF No. 1-1), but will not file it until the matter of the payment of the
12 filing fee is resolved. If Plaintiff chooses to file a new application to proceed *in forma pauperis*
13 he must file a fully complete application to proceed *in forma pauperis*. If Plaintiff files another
14 incomplete application to proceed *in forma pauperis*, the Court will dismiss the case in its
15 entirety, without prejudice, to file a new case when Plaintiff is able to acquire the necessary
16 documents to file a complete application to proceed *in forma pauperis*.

17 **II. CONCLUSION**

18 For the foregoing reasons, IT IS ORDERED that the Clerk of the Court SHALL SEND
19 Plaintiff the approved form application to proceed *in forma pauperis* by a prisoner, as well as
20 the document entitled information and instructions for filing an *in forma pauperis* application.

21 IT IS FURTHER ORDERED that on or before Friday, January 6, 2017, Plaintiff shall
22 either: (1) file a fully complete application to proceed *in forma pauperis*, on the correct form
23 with complete financial attachments in compliance with 28 U.S.C. § 1915(a); or (2) pay the full
24 \$400 fee for filing a civil action (which includes the \$350 filing fee and the \$50 administrative
25 fee).

26 IT IS FURTHER ORDERED that, if Plaintiff's next application to proceed *in forma*
27 *pauperis* is incomplete, the Court will dismiss the case, without prejudice, for Plaintiff to file a
28 new case when he is able to acquire the necessary documents to file a complete application

1 to proceed *in forma pauperis*.

2 IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
3 dismissal of this action may result.

4 IT IS FURTHER ORDERED that the Clerk of the Court shall retain the complaint (ECF
5 No. 1-1), but shall not file it at this time.

6
7 DATED: This 5th day of December, 2016.

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9 _____
United States Magistrate Judge